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HB 3333 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

House Committee on Energy and Environmental Protection

Public Hearing - February 7, 1998
9:00A.M., Room 312 State Capitol

By
John T. Harrison, Environmental Center
Jacuelin Miller, Environmental Center

HB 3333 would institute an administrative appeals process for various discretionary decisions made pursuant to the State Environmental Impact Statement Law.

Our statement on this measure is compiled from voluntarily submitted opinions from the listed academic reviewers and does not constitute an institutional position of the University of Hawaii.

Although proposals to provide for administrative appeal to the Environmental Council have frequently arisen, institution of opportunity for public comment on environmental assessments addressed the issue that most commonly motivated such proposals. While we are directly involved in the EA/EIS process, we are unaware of exactly what problem has prompted the present proposed modifications to the appeal process. It is apparent that the measure is carefully-crafted, specifying limitations on standing and review of the administrative record. However, given the Courts' deference to agency discretion, and given the presumption of agency expertise in matters of substantive evidence relevant to their discretion, we feel it unlikely that a decision by the Council contrary to an agency's findings would ordinarily prevail.

Apart from that observation, we have additional reservations as follows:

Page 2, Line 13. The ten day limit on time to initiate an appeal is exclusionary of much of the general public, particularly people on a neighbor island. Even our University mail takes at least 1 week to show up, leaving only 3 days to review and reflect on the issues prior to filing an appeal. Furthermore, the ten day period is not even cited as ten business days! Thirty days would seem essential.

Page 3 line 10. How would the Council's findings be issued? Presently, other than special publications such as the Annual Report, Council Notices appear in the Environmental Notice, which is published biweekly.

Page 9 line 15. Again, ten days is insufficient time for initiating judicial proceedings. It should be at least 30.